

# **EXHIBIT 2**

**JOAN CALHOUN**

**v.**

**FARMERS INSURANCE EXCHANGE AND DOES I through V,  
and ROE CORPORATIONS I through V inclusive,,**

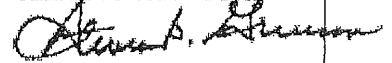
**Case No. To be determined**

**DEFENDANT'S EXHIBITS TO PETITION FOR REMOVAL**

# **EXHIBIT 2**

**COMPLAINT FILED BY PLAINTIFF IN CLARK COUNTY, NEVADA,  
EIGHTH JUDICIAL DISTRICT COURT, CASE NUMBER A-17-758544-C**

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Office of General Counsel

AUG 10 2017

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Attorneys for Plaintiff JOAN CALHOUN

DISTRICT COURT

CLARK COUNTY, NEVADA

10 JOAN CALHOUN,

11 Plaintiff,

12 vs.

13 AUTO CLUB GROUP INSURANCE  
14 COMPANY, a Michigan corporation,

15 Defendant.

CASE NO.: A-17-758544-C

DEPT. NO.: Department 28

16  
17 **COMPLAINT AND JURY DEMAND**

18 Plaintiff, JOAN CALHOUN, by and through her attorney, MATTHEW L. SHARP,  
19 ESQ. of MATTHEW L. SHARP, LTD., pleads and alleges as follows:

20 **PARTIES**

21 1. JOAN CALHOUN is a citizen and resident of the county of Clark, State of  
22 Nevada.

23 2. At all relevant times, Defendant AUTO CLUB GROUP INSURANCE  
24 COMPANY ("AUTO CLUB") was a Michigan corporation which through its dealings with  
25 Mrs. Calhoun and otherwise subjected itself to all laws and remedies available under Nevada  
26 law.

27 ///

28 ///

3. This is an action to enforce an agreement for the payment of attendant care insurance benefits owed under a Michigan no-fault automobile insurance policy entered into between JOAN CALHOUN and AUTO CLUB, and to seek redress for AUTO CLUB's various violations of its good faith duties.

4. JOAN CALHOUN was a schoolteacher. On July 7, 1998, JOAN CALHOUN was catastrophically injured in a motor vehicle accident in which she suffered a head injury and musculoskeletal injuries, among other injuries; as a result of her accident-related injuries JOAN CALHOUN has been suffering constant headaches, tension headaches, debilitating migraines, epilepsy, depression, anxiety, tremors, impaired coordination, and musculoskeletal and other problems.

6. At all relevant times, JOAN CALHOUN was covered by an automobile insurance policy with AUTO CLUB.

8. Since the day of the accident, JOAN CALHOUN has suffered from constant headaches, tension headaches, debilitating migraines, seizures/epilepsy, depression, and anxiety, among other things. She relies on medication and injections to address the pain from her headaches, although the pain is never relieved completely.

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///

1           10.     JOAN CALHOUN suffers from 3 to 5 migraines a week, on average, and there  
2 is no way to know when they will occur. She needs someone on alert at all times and no  
3 preventative measures are available because of the unpredictable nature of the migraines.

4           11.     JOAN CALHOUN suffers from other deficits as a result of the automobile  
5 accident, including but not limited to, unsteady balance and gait, thereby, she needs assistance  
6 with standing and walking, and has a history of falling.

7           12.     JOAN CALHOUN requires assistance in the form of administration of medicine,  
8 assistance with toileting, personal hygiene, showering, dressing, supervision, etc.

9           13.     As a result of the accident, JOAN CALHOUN has incurred and is entitled to:

10           a.     All reasonable charges for reasonably necessary products, services, and  
11 accommodations for her care, recovery, and/or rehabilitation;

12           b.     Reasonably necessary attendant care services, including 24/7 attendant  
13 care, payable at reasonable rates, determined by comparison to a variety of factors, including  
14 but not limited to, total compensation market rates;

15           c.     Reasonably necessary nursing care services performed by a family  
16 member, payable at reasonable rates, determined by comparison to a variety of factors,  
17 including but not limited to, total compensation market rates;

18           d.     Case management services and appropriate or applicable therapies;

19           e.     Other personal protections benefits in accordance with the applicable No  
20 Fault provisions, including but not limited to, mechanisms of assistance;

21           f.     Interest on overdue benefits payments.

22           14.     JOAN CALHOUN requires 24 hour a day attendant care.

23           15.     Attendant care/nursing care are types of medical benefits (allowable expenses)  
24 that are payable for a lifetime under the policy/law (although not specifically mentioned in  
25 either). AUTO CLUB is obligated to pay "all reasonable charges" for such benefits.

26           16.     Over the fifteen plus years after JOAN CALHOUN moved to Nevada, AUTO  
27 CLUB engaged in bad faith and fraudulent conduct towards JOAN CALHOUN, and breached  
28 the policy of insurance. The bad faith conduct included the failure to conduct reasonable

1 investigations, fraudulent misrepresentations, concealment of benefits and information, putting  
2 its own interests above the interests of the insured, improper communications, and so on. On  
3 one occasion where AUTO CLUB did investigate, it conducted a biased investigation, designed  
4 to reduce the number of hours of attendant care benefits payable to JOAN CALHOUN. An  
5 honest and forthright case manager (who since left the biased company hired by AUTO CLUB)  
6 confirmed JOAN CALHOUN's need for 24 hour care instead of dishonestly decreasing the  
7 hours as AUTO CLUB intended when it hired the company employing the case manager.

8 17. JOAN CALHOUN previously filed suit in this Court against AUTO CLUB  
9 (case no. A-14-701604-C) seeking redress for AUTO CLUB's bad faith conduct and its breach  
10 of contract. AUTO CLUB's bad faith conduct continued during the litigation.

11 18. After litigating the case, the parties agreed upon a resolution in late 2016 and on  
12 February 21, 2017, the Court entered the Stipulation and Order for Dismissal with Prejudice.

13 19. Separately from the confidential settlement agreement resolving the litigation  
14 over past conduct, the parties entered into an Attendant Care Agreement (executed in  
15 November/December 2016) that governed the payment of future attendant care insurance  
16 benefits for the period from November 1, 2016 through October 31, 2020. A copy of the  
17 Agreement is attached as Exhibit A.

18 20. The Agreement was for payment by AUTO CLUB of 24/7 attendant care  
19 insurance benefits for the four-year period at a rate that increased over time.

20 21. The Agreement governs the effect of a "substantial change" in JOAN  
21 CALHOUN's condition. Paragraph 3 reads:

22 If there is a substantial change in my medical condition, as documented by a  
23 physician, that either increases or decreases the level or amount of attendant care  
24 needed, then the terms of this agreement regarding future attendant care benefits  
may be renegotiated by either party and are not barred by this agreement.

25 Exhibit A.

26 22. The Agreement was intended to be performed in Nevada and to pay for care that  
27 was provided in Nevada.

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1           23.     On June 21, 2017, AUTO CLUB's adjuster, Shawnda Hice wrote to JOAN  
2 CALHOUN that AUTO CLUB was, effective June 20, 2017, unilaterally decreasing payment  
3 of attendant care from 24 hours a day to 14 hours a day. Ms. Hice wrote that JOAN  
4 CALHOUN's neurologist, Dr. Ansarinia, had indicated "that the hours need for family provided  
5 attendant care is 14/hrs per day and 9 hours per week for agency provided attendant care."  
6 Exhibit B. AUTO CLUB did not cite to the Attendant Care Agreement or any of its provisions  
7 and did not attach the updated disability slip that it claimed supported its unilateral decision.

8           24.     Just as it had done previously with respect to JOAN CALHOUN and her claim  
9 for benefits, AUTO CLUB continued the pattern and practice of bad faith behavior. AUTO  
10 CLUB engaged in no investigation before unilaterally decreasing attendant care benefits.  
11 AUTO CLUB did not contact Dr. Ansarinia, did not contact the Calhouns, did not contact the  
12 agency providing the additional care (which was at 9 hours before and after AUTO CLUB's  
13 denial of family provided attendant care benefits above 14 hours per day); in short, AUTO  
14 CLUB failed to reasonably investigate or evaluate what had allegedly changed with JOAN  
15 CALHOUN's condition and needs, if anything.

16           25.     AUTO CLUB did not notify JOAN CALHOUN or her counsel that it wished to  
17 renegotiate the terms of the Attendant Care Agreement because of any alleged substantial  
18 change in Mrs. Calhoun's condition.

19           26.     AUTO CLUB chose to disregard the Agreement and deny benefits to which  
20 JOAN CALHOUN is entitled.

21           27.     Auto Club knows that there has been no substantial change in Joan Calhoun's  
22 condition.

23           28.     Auto Club knows Joan Calhoun needs 24 hour care and has decided to terminate  
24 such benefits in conscious disregard of Joan Calhoun's rights.

25     ///

26     ///

27     ///

28

**FIRST CAUSE OF ACTION**  
**(Defendant's Breach of the Covenant of Good Faith And  
Fair Dealing and Defendant's Bad Faith under Common Law)**

29. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1 through 28 as though fully set forth herein.

30. AUTO CLUB owed JOAN CALHOUN an implied duty of good faith and fair dealing.

31. AUTO CLUB breached its duty of good faith and fair dealing by improperly and unilaterally and intentionally denying benefits for 10 hours of attendant care per day, failing to conduct a reasonable investigation, failing to determine or confirm whether there was a substantial change in her condition, putting its own interests ahead of those of JOAN CALHOUN, and by ignoring its obligation to try to renegotiate the terms of the Attendant Care Agreement. AUTO CLUB's denial of benefits and other conduct was without a reasonable basis or with knowledge or reckless disregard for the absence of any reasonable basis.

32. AUTO CLUB breached its duty of good faith and fair dealing by failing to give every reasonable benefit of the doubt to JOAN CALHOUN and instead placed its own pecuniary interests above hers and ignored its obligation to investigate and determine whether there was a substantial change in her condition.

33. AUTO CLUB's breach has caused JOAN CALHOUN to incur special damages in excess of \$10,000, including, but not limited to: the past and continuing attendant care insurance benefits she should have received from AUTO CLUB since the denial of attendant care of more than 14 hours per day, as well as the value of future denied attendant care benefits, and appropriate interest thereon; lost opportunity costs; and all other reasonably foreseeable and consequential damages flowing naturally from AUTO CLUB's breach and/or properly payable under statute or common law, all in amounts not fully ascertained, but within this Court's jurisdiction.

34. As a further result of AUTO CLUB's breach, JOAN CALHOUN suffered, and continues to suffer, anxiety, worry, mental, and emotional distress, all to JOAN CALHOUN's general damages in a sum in excess of \$10,000.



1           35.     AUTO CLUB intended for its conduct to cause JOAN CALHOUN injury or  
2     proceeded with its conduct in conscious disregard for JOAN CALHOUN's rights, as to subject  
3     JOAN CALHOUN to cruel and unjust hardship constituting malice, oppression, or fraud under  
4     NRS 42.005, thereby entitling Plaintiff to recover punitive damages in an amount in excess of  
5     \$10,000.

6           36.     JOAN CALHOUN had to hire counsel to pursue her claims as a result of AUTO  
7     CLUB's actions and therefore she is entitled to reasonable attorney fees and costs.

8                                 **SECOND CAUSE OF ACTION**  
9                                 **(Violation of the Nevada Unfair Trade Practices Act)**

10          37.     Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1  
11     through 36 as though fully set forth herein.

12          38.     AUTO CLUB engaged in Unfair Trade Practices in violation of the Nevada  
13     Unfair Trade Practices Act by failing to adopt and implement reasonable standards for  
14     investigation and processing of JOAN CALHOUN's claim. NRS 686A.310(c).

15          39.     AUTO CLUB engaged in Unfair Trade Practices in violation of the Unfair Trade  
16     Practices Act by failing to provide promptly to an insured a reasonable explanation of the basis  
17     in the insurance policy/Agreement, with respect to the facts of the insured's claim and the  
18     applicable law, for the denial of the claim or for an offer to settle or compromise the claim. NRS  
19     686A.310(n).

20          40.     AUTO CLUB engaged in Unfair Trade Practices in violation of the Nevada  
21     Unfair Trade Practices Act by failing to pay attendant care benefits owed, when liability under  
22     the policy and the Agreement was reasonably clear. NRS 686A.310(e).

23          41.     AUTO CLUB knew or should have known there was no reasonable basis not to  
24     pay all reasonable charges for attendant care insurance benefits owed to JOAN CALHOUN and  
25     that its actions towards JOAN CALHOUN were unfair.

26          42.     AUTO CLUB's breach has caused JOAN CALHOUN to incur special damages  
27     in excess of \$10,000, including, but not limited to: the past and continuing attendant care  
28     insurance benefits she should have received from AUTO CLUB since the denial of attendant



1 care of more than 14 hours per day, as well as the value of future denied attendant care benefits,  
2 and appropriate interest thereon; lost opportunity costs; and all other reasonably foreseeable and  
3 consequential damages flowing naturally from AUTO CLUB's breach and/or properly payable  
4 under statute or common law, all in amounts not fully ascertained, but within this Court's  
5 jurisdiction.

6 43. As a further result of AUTO CLUB's violations, JOAN CALHOUN suffered,  
7 and continues to suffer, anxiety, worry, mental, and emotional distress, all to JOAN  
8 CALHOUN's general damages in a sum in excess of \$10,000.

9 44. AUTO CLUB intended for its conduct to cause JOAN CALHOUN injury or  
10 proceeded with its conduct in conscious disregard for JOAN CALHOUN's rights, as to subject  
11 JOAN CALHOUN to cruel and unjust hardship constituting malice, oppression, or fraud under  
12 NRS 42.005, thereby entitling Plaintiff to recover punitive damages in an amount in excess of  
13 \$10,000.

14 45. JOAN CALHOUN had to hire counsel to pursue her claims as a result of AUTO  
15 CLUB's actions and therefore she is entitled to reasonable attorney fees and costs.

16 **THIRD CAUSE OF ACTION**  
17 **(Breach of Contract)**

18 46. Plaintiff realleges and incorporates by reference the allegations in Paragraphs 1  
19 through 45 as though fully set forth herein.

20 47. Under the policy of insurance and the No Fault Act, AUTO CLUB was obligated  
21 to pay personal protection insurance (PIP) benefits to or on behalf of JOAN CALHOUN,  
22 including but not limited to:

23 a. All reasonable charges for reasonably necessary products, services, and  
24 accommodations for her care, recovery, and/or rehabilitation;

25 b. Reasonably necessary attendant care services, including 24/7 attendant  
26 care, payable at reasonable rates, determined by comparison to a variety of factors, including  
27 but not limited to, total compensation market rates;  
28

c. Reasonably necessary nursing care services performed by a family member, payable at reasonable rates, determined by comparison to a variety of factors, including but not limited to, total compensation market rates;

d. Case management services and appropriate or applicable therapies;

e. Other personal protections benefits in accordance with the applicable No Fault provisions, including but not limited to, mechanisms of assistance;

f. Interest on overdue benefits payments.

48. The parties resolved the prior case through a confidential settlement that resolved claims for past damages. The parties entered into a separate Agreement that governs the payment of future attendant care insurance benefits up through the end of October, 2020. The Agreement required payment of 24/7 attendant care insurance benefits.

49. AUTO CLUB has denied payment of 24 hour attendant care insurance benefits due under the Attendant Care Agreement, as of June 20, 2017. AUTO CLUB unilaterally denied 10 hours per day of attendant care benefits, in violation of the agreement.

50. AUTO CLUB breached the Agreement by failing to confirm whether JOAN CALHOUN's condition had changed substantially.

51. AUTO CLUB also breached the Agreement by failing to seek to renegotiate the terms of the Agreement, as the Agreement provides. Instead, without reference to the Agreement, AUTO CLUB unilaterally denied 10 hours per day of attendant care insurance benefits.

52. As a result of AUTO CLUB's breaches of its contractual obligations, JOAN CALHOUN suffered damages that are the natural and probable consequence of the breaches.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays the Court to enter Judgment for Plaintiff and against Defendant as follows:

1. For special damages in excess of \$10,000;
2. For general damages in excess of \$10,000;
3. For punitive damages in excess of \$10,000;

4. For prejudgment, pre-complaint, and post-judgment interest;
5. For exemplary damages in excess of \$10,000;
6. For reasonable attorneys' fees and costs incurred; and
7. For such other and further relief as this Court deems proper.

DATED this 17<sup>th</sup> day of July 2017.

MATTHEW L. SHARP, LTD.

/s/ Matthew L. Sharp

Matthew L. Sharp  
432 Ridge St  
Reno, NV 89501  
Phone: (775) 324-1500  
Fax: (775) 284-0675  
[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

Attorney for Plaintiff JOAN CALHOUN

**JURY TRIAL DEMAND**

Plaintiff JOAN CALHOUN hereby demands trial by jury of all issues so triable.

DATED this 17<sup>th</sup> day of July 2017.

MATTHEW L. SHARP, LTD.

/s/ Matthew L. Sharp

Matthew L. Sharp  
432 Ridge St  
Reno, NV 89501  
Phone: (775) 324-1500  
Fax: (775) 284-0675  
[matt@mattsharpplaw.com](mailto:matt@mattsharpplaw.com)

Attorney for Plaintiff JOAN CALHOUN



June 21, 2017

AAA  
7520 Westshire Dr.  
Lansing, MI 48917-8660

Fax (517) 627-1764  
Fax (517) 627-3991

Mrs. Joan Calhoun  
51 Glade Hollow Drive  
Las Vegas, NV 89135

RE:  
Claim Number: YP-260697  
Date of Loss: 07/07/1998

Dear Mrs. Calhoun:

This letter is to advise you that AAA Insurance has received an updated disability slip regarding family provided and agency provided attendant care benefits from Dr. Ansarinia.

The last disability slip that we had on file had expired on February 29, 2016 and that is why I had requested an updated medical opinion in regards to your attendant care needs and being able to update your claim file for your current and ongoing attendant care needs.

Dr. Ansarinia has indicated that the hours need for family provided attendant care is 14/hrs per day and 9 hours per week for agency provided attendant care. This is effective June 20, 2017.

This information has been added and updated to your claim file and if you have any questions, please feel free to contact me directly at 517-622-2435.

Sincerely,

Shawnda Hice  
Senior Claims Specialist

ATTENDANT CARE AGREEMENT

DATE OF LOSS: July 7, 1998

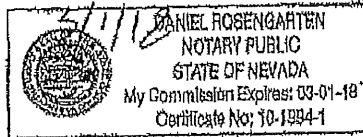
CLAIM NUMBER: YP-260697

1. I, Joan Calhoun, agree to accept and the Auto Club Group Insurance Company ("ACGIC"), and all persons and other organizations associated with it, agree to pay, as described below, future attendant care benefits incurred for injuries associated with a motor vehicle accident which occurred on or about July 7, 1998, in the Township of Van Buren, State of Michigan.
  2. In consideration of the mutual compromise of a disputed claim for attendant care benefits incurred from November 1, 2016 through October 31, 2020, ACGIC will pay, and Joan Calhoun will accept, twenty four (24) hours of attendant care per day at a rate of Fourteen Dollars (\$14.00) per hour. In consideration of the mutual compromise of a disputed claim for attendant care benefits incurred from November 1, 2020 through October 31, 2024, ACGIC will pay, and Joan Calhoun will accept, twenty four (24) hours of attendant care per day at a rate of Fifteen Dollars (\$15.00) per hour.
  3. If there is a substantial change in my medical condition, as documented by a physician, that either increases or decreases the level or amount of attendant care needed, then the terms of this agreement regarding future attendant care benefits may be renegotiated by either party and are not barred by this agreement.
  4. I agree that I will submit calendars to ACGIC at the end of each month which will reflect the number of hours of attendant care provided to me and the identity of the person(s) providing said care.
  5. I agree that ACGIC will be entitled to a reduction in the amount of attendant care payable for any time that I am not receiving attendant care as described above.
  6. I understand that this future attendant care agreement is a compromise of a disputed claim and that ACGIC is not necessarily admitting liability for the payment of personal protection insurance benefits, inclusive of attendant care benefits, beyond the dates identified above. Nothing in this agreement affects any other benefits to which Joan Calhoun may be entitled as a result of the automobile accident.
- I DECLARE THAT I, JOAN CALHOUN, HAVE CAREFULLY READ THIS AGREEMENT, UNDERSTAND ITS TERMS, AND VOLUNTARILY ENTER INTO THIS AGREEMENT WITH THE AUTO CLUB GROUP INSURANCE COMPANY.

Joan Calhoun  
JOAN CALHOUN

EXECUTED ON: 11/22/16  
Subscribed and sworn to before me this 22 day of November, 2016.

Notary Public Clark County, State of NV  
My Commission Expires: Acting in the County of Clark



Shaundra Hice  
on behalf of ACGIC

EXECUTED ON: 12-7-16  
Subscribed and sworn to before me this 7 day of Dec, 2016

Angela R. Rademacher  
Notary Public \_\_\_\_\_ County, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_ Acting in the County of \_\_\_\_\_

ANGELA R. RADEMACHER  
NOTARY PUBLIC - STATE OF MICHIGAN  
COUNTY OF EATON  
My Commission Expires June 14, 2021  
Acting in the County of Eaton